

ORIGINAL

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

In the Matter of )

)  
 Amendment of Section 73.202(b),  
 Table of Allotments,  
 FM Broadcast Stations  
 (Glenville, North Carolina)

) MB Docket No. 02-352  
 ) RM-10602  
 ) RM-10776  
 ) RM-10777  
 )

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FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

To: Marlene H. Dortch, Office of the Secretary  
 Attn: Assistant Chief, Audio Division  
 Media Bureau

**REPLY COMMENTS**

The Stair Company ("Stair"), licensee of Station WCTU(FM), Channel 290A, Tazewell, Tennessee, by its counsel, hereby submits its Reply Comments pursuant to the Commission's Public Notice, Report No. 2624 (rel. Aug. 26, 2003).

1. Stair filed a timely counterproposal in this proceeding, seeking to relocate Station WCTU from Tazewell to Weaverville, North Carolina on Channel 290C2. That counterproposal conflicts with the petition of Glenville Radio Broadcasters ("GRB") to allot Channel 289A to Glenville, North Carolina. *See Notice of Proposed Rule Making ("NPRM")*, DA 02-3066 (rel. Nov. 8, 2002).

2. Georgia-Carolina Radiocasting Company ("GCRC") also filed a timely counterproposal. GCRC requests that the Commission make a new allotment of Channel 290A to Clyde, North Carolina.<sup>1</sup> GCRC's counterproposal conflicts with GRB's proposal for

<sup>1</sup> GCRC's reply comments in this proceeding raised certain matters with reference to an application filed by Stair seeking a minor modification to the facilities of WCTU. Stair addressed those matters in a Reply filed on February 5, 2003, and its arguments need not be repeated here. Since the WCTU application is independent of this rule making proceeding, any issues with respect to the application should be addressed in connection with the processing of the application, not in this proceeding.

3. Glenville, and it is also mutually exclusive with Stair's Weaverville proposal. No alternative channels have been identified which could provide service equivalent to any of the three proposals in this proceeding, so only one of the three can be granted.

4. However, the Commission need not engage in a comparison of the relative public interest benefits of the three proposals. Both the Glenville and the Clyde proposals fail to meet minimum requirements for acceptability. Stair and GCRC argued persuasively in their respective counterproposals that Glenville, North Carolina is not a *bona fide* community for allotment purposes. Nothing more needs to be said on that account. The Commission should not make the Glenville allotment because there is no community to which a channel can be allotted.

5. GCRC's Clyde proposal is also defective, for failure to meet the community coverage requirement. Section 73.315(b) of the Commission's Rules requires that a transmitter site be chosen that line-of-sight can be obtained over the community of license, and that there be no major terrain obstruction in the signal path. *See also Jefferson City, Cumberland Gap, Elizabethton, Tennessee and Jonesville Virginia*, 10 FCC Rcd 12207 (1995), *recon. denied*, 13 FCC Rcd 2303 (1998); *Creswell, Oregon*, 3 FCC Rcd 4608 (1988), *recon. denied*, 4 FCC Rcd 7040 (1989). As the accompanying technical analysis demonstrates, line-of-sight coverage of Clyde cannot be obtained from GCRC's proposed reference coordinates, because there are two major terrain obstructions between the transmitter site and the community. The terrain profile study shows two mountain ridges (Cold Mountain and Ratcliff and Pressley Mountains) that would form a barrier to signal propagation. The terrain shadowing study shows that no portion of Clyde would receive a signal from a transmitter at the proposed location, assuming a 100-meter tower and full Class A facilities. Under similar circumstances, the Commission denied an allotment to Cumberland Gap, Tennessee because of a major terrain obstruction (a mountain

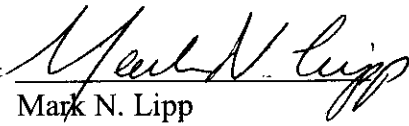
ridge) between the proposed antenna and the community. *Jefferson City, Tennessee, et al.*, *supra*. It should deny the Clyde allotment for the same reason.

6. If all three proposals were technically acceptable, the Commission would decide among the three proposals which one best furthers the public interest. The framework for choosing among competing FM allotment proposals is set forth in *Revision of FM Assignment Policies and Procedures*, 90 F.C.C.2d 88 (1982). The FM Allotment priorities are: (1) first full-time aural service; (2) second full-time service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). *Id.* In this case all three proposals would further priority (3) by providing a first local service to the proposed community. In such cases, the Commission selects among the competing proposals on the basis of the population of the proposed community of license. *Rose Hill, Trenton, Aurora, and Ocracoke, North Carolina*, 15 FCC Rcd 10739 (2000); *Blanchard, Louisiana and Stephens, Arkansas*, 8 FCC Rcd 7083 (1993), *recon. denied*, 10 FCC Rcd 9829 (1995). According to the 2000 U.S. Census, the population of Weaverville is 2,416 and the population of Clyde is 1,324. Glenville is not listed in the U.S. Census, but the petitioner estimates its population to be 1,572. Because of Weaverville's substantially larger population than either of the other two communities, Stair's Weaverville proposal should be preferred.

For the foregoing reasons, the Commission should dismiss or deny the petitioner's Glenville proposal and GCRC's Clyde counterproposal. It should grant Stair's counterproposal and allot Channel 290C2 to Weaverville as its first local service.

Respectfully submitted,

THE STAIR COMPANY

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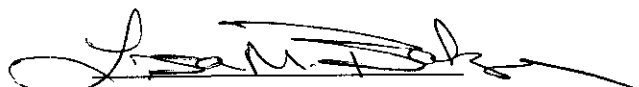
September 10, 2003

### CERTIFICATE OF SERVICE

I, Lisa Balzer, a secretary in the law firm of Vinson & Elkins, do hereby certify that I have on this 10th day of September, 2003, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "**Reply Comments**" to the following:

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